

# MSPB Processes and Procedures

## BEST PRACTICES

# Types of Appeals/Jurisdiction

- Probationary cases
- Restoration cases
- VEOA
- USERRA
- Adverse Actions
- Reduction in Force
- Performance based actions
- IRA's

# Mixed Cases

- A mixed case is one which alleges discrimination in connection with a claim which can be also appealed to MSPB.
- See 5 CFR 1201.151
- & 29 CFR 1614.302 & 303.



# The Process

- Action taken
- Notice of Appeal
- Filing the Appeal
- Acknowledgement of Appeal
- Assignment of Judge
- Discovery
- Settlement Discussions
- Prehearing Conference
- Hearing
- Initial Decision
- Petition for Review

# Mediation and other ADR Processes

- MAP
- Settlement Discussions
- Settlement Judges



# Motions

- Motions and Responses
- 5 C.F.R. 1201.44
- Discovery 5 C.F.R. 1201.71
- Subpoenas 5 C.F.R. 1201.81
- Sanctions 5 C.F.R. 1201.43



# Select a theory

- All of your case information has to be reduced to a theory, a statement of what the information proves, and how it proves it.

# Burden of Proof

- Obligation imposed upon a party in making his case and upon the opposing party in asserting defenses and counterclaims to persuade the trier of fact by a standard of evidence





# Standard of Proof



- Preponderance of evidence is the degree of evidence that reasonable person, considering the record as a whole would accept as sufficient to find that a contested fact is more likely to be true than untrue.

# CHARGES

- Learned Treatises
- Table of Penalties
- Narrative Charges
- Crime v. Conduct



# Drafting Charges

- Label
- Elements
- Specifications
- *Burroughs v. Army*,  
918 F2d 170



# How to Present your case

- Be Clear & Concise
- Provide the facts
- Be Honest and don't try to Fool the AJ
- Don't Misrepresent the Law
- Comply with Board orders and be timely
- Be prepared



# PREPARATION



- Before the hearing, you must first organize every facet of the case presentations, including testimony and documents.

# Organizing Testimony



- Testimony and witnesses should be put together in a persuasive order that puts all the pieces of the case together. This is the job of the representatives.

# Credibility Factors

- Witness' opportunity and capacity to observe
- Witness character
- Bias on part of witness
- Contradiction of version with other evidence
- Inherent improbability of witness' version

# Credibility Factors

- Witness' demeanor
- Prior inconsistent statement



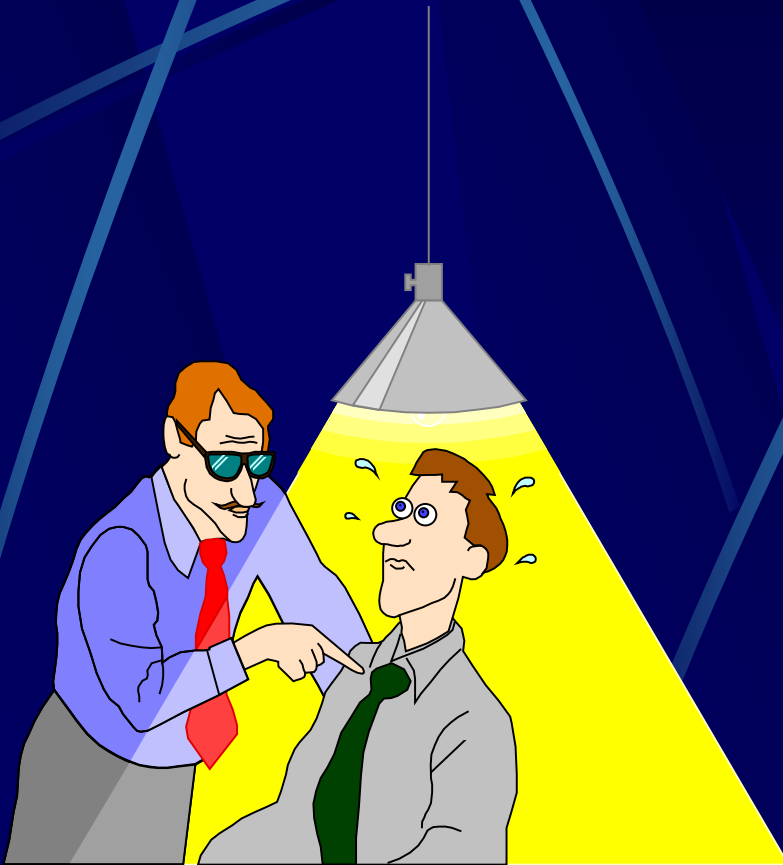
# Direct Examination

- Witness preparation is the key to a good direct examination.
- Leading questions
- Asking questions?
- Development of record.
- Burdens of Proof 5  
C.F.R. 1201.56



# Cross Examination

- A good cross can be aggressive or subtle, but it is not an interrogation.



# Cross Examination

- Once you've made your point...but what if they don't stop?



# CLOSING ARGUMENTS

- Oral
- Written
- Remember closing arguments are not evidence.